

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION**

Case No. 1:13-md-02419-RWZ

This document relates to all cases.

**RESPONSE AND OPPOSITION BY ROANOKE-AREA
LICHTENSTEINFISHWICK AND BROWN & JENNINGS INTERVENORS
TO THE “EMERGENCY” MOTION BY INSIGHT HEALTH CORPORATION [ECF
NO. 1149]**

The below-named Roanoke-Area LichtensteinFishwick and Brown & Jennings Intervenor (“Intervenor”)¹, by counsel, appear specially to note their opposition to the “emergency motion” (ECF No. 1149) filed by Insight Health Corporation (“Movant”), asking that this Court enjoin the “Roanoke Gentry Locke Plaintiffs” from “taking any action” (*see* ECF No. 1149 at 1) with respect to suits filed by those plaintiffs in the Circuit Court for the City of Roanoke (“State Court”). The subject suits remain pending in the State Court and have not been removed to or otherwise transferred to this Court. While the emergency motion does not seek to enjoin these Intervenor, it does appear to ask the Court to enjoin counsel for the Roanoke Gentry Locke Plaintiffs from taking any action with respect to cases that were filed in the State Court by these Intervenor. *See id.* at 1.

These Intervenor have argued in multiple earlier submissions that this Court does not have “related to” jurisdiction and that the exercise of such jurisdiction is contrary to established

¹ Previously, *see* ECF Nos. 129, 159, 792 and 1056, these Intervenor have appeared specially for the limited purpose of opposing the Trustee’s Renewed Transfer Motion (ECF No. 732), consistent with ¶1(a) of MDL Order No. 5 (ECF No. 87). Like those earlier submissions, this submission is without waiver of these Intervenor’s rights and without consent to the jurisdiction of this Court, generally or specifically, over the suits that these Intervenor filed in the State Court on March 13, 2014. Those suits were subsequently removed to the U.S. District Court for the Western District of Virginia, and are the subject of motions to remand pending in that court.

principles of federalism. Federalism boundaries will be crossed even further if this Court grants the injunctive relief sought by Movant.

These Intervenor write in support of the Gentry Locke Plaintiffs and ask the Court to deny the emergency motion. As discussed by the Gentry Locke Plaintiffs, use of the “necessary in aid of” jurisdiction exception to the Anti-Injunction Act to enjoin state courts is extremely disfavored and the reach of this exception is construed narrowly. Movant’s discussion of the applicable law largely leaves “necessary” out of its analysis; however, that critical term cannot be read out of the statute. As discussed by the Gentry Locke Plaintiffs, and effectively echoed today by the Plaintiffs’ Steering Committee, *see* ECF No. 1162, the relief sought by Movant is not “necessary” to aid the jurisdiction this Court has said it will exercise (but which arguably the Court has not yet exercised).

For the reasons set forth above, these Intervenor ask that the Court deny Movant’s emergency motion.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gregory L. Lyons, hereby certify that I filed this document through the CM/ECF system, thereby providing electronic notice of such filing to the registered participants as identified in the Notice of Electronic Filing (NEF) and that paper copies will be provided to those indicated in the NEF as non-registered participants.

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Dated: June 2, 2014